

**COMBINED DECLARATION AND POWER
OF ATTORNEY FOR PATENT APPLICATION**

As one of the below-named inventors, I hereby declare that:

My residence, post office address and citizenship is as stated below next to my name.

I believe I am the first, original and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled HYBRID WIRELESS OPTICAL AND RADIO FREQUENCY COMMUNICATION LINK, the specification of which is filed concurrently herewith, and which is assigned Attorney Docket No. 186.302 by my below-named attorneys.

The persons named as inventors are: Heinz Willebrand and Maha Achour.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56(a).

No priority claim is made under 35 U.S.C. § 119 or 35 U.S.C. § 120.

Power of Attorney: As the named inventors, we hereby appoint John R. Ley, Registration No. 27,453, L. Jon Lindsay, Registration No. 36,855, and Steven J. Spellman, Registration No. 45,124, to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

Send all correspondence to: John R. Ley, JOHN R. LEY, LLC, 5299 DTC Boulevard, Suite 610, Englewood, Colorado 80111-3327, and direct telephone calls to John R. Ley at (303) 740-9000.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first joint inventor: Heinz Willebrand

Post Office Address: _____

Residence Address: 7083 Fairways Drive
Longmont, CO 80503

Inventor's Signature 

Date: 1/11/00 Citizenship: Germany

Full name of second joint inventor: Maha Achour

Post Office Address: _____

Residence Address: 4215 Camino Sandoval
San Diego, CA 92130

Inventor's Signature _____

Date: _____ Citizenship: _____

Full name of first joint inventor: Heinz Willebrand

Post Office Address: _____

Residence Address: 7083 Fairways Drive
Longmont, CO 80503

Inventor's Signature _____

Date: _____ Citizenship: Germany

Full name of second joint inventor: Maha Achour

Post Office Address: _____

Residence Address: 4215 Camino Sandoval
San Diego, CA 92130

Inventor's Signature Melissa

Date: 01/12/00 Citizenship: Algerian

Copy, as filed in parent

LIGHTPOINTE COMMUNICATIONS, Inc.
Attorney Docket No. 69922

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

POWER OF ATTORNEY BY ASSIGNEE (AND REVOCATION
OF PREVIOUS POWERS OF ATTORNEY)

Commissioner for Patents
Washington, D.C. 20231

Sir:

LightPointe Communications, Inc., a Delaware Corporation, is the assignee of the entire interest in the subject patents and applications listed herein. LightPointe Communications, Inc., hereby revokes any and all powers of attorney and authorizations of agent heretofore made in respect to all patents and applications listed herein. LightPointe Communications, Inc., hereby appoints the following as its attorneys, with full power of substitution and revocation, to maintain and/or prosecute these patents and/or applications and to transact all business in the Patent and Trademark Office connected therewith and requests that all correspondence in respect to this application be directed to:

Richard E. Wawrzyniak
FITCH, EVEN, TABIN & FLANNERY
Suite 1600, 120 South LaSalle Street,
Chicago, Illinois 60603-4277,
Telephone No. (858) 552-1311
CUSTOMER NUMBER 22242



2 2 2 4 2 —

FETF DOCKET	INVENTOR	TITLE	Application No.	Filing Date
69922	Willebrand, et al.	Hybrid Wireless Optical and Radio Frequency Communication Link	09/482,782	1/13/00

LightPointe Communications, Inc.



Lawrence B. Prior III
Chief Financial Officer

Dated: 11/22/00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Willebrand, et al.
Application No. 09/482,782
Filed: 1/13/2000
For: HYBRID WIRELESS OPTICAL
AND RADIO FREQUENCY
COMMUNICATION LINK
Group Art
Unit: 2733
Examiner:

CERTIFICATE UNDER 37 C.F.R. § 3.73(b)

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

LightPointe Communications, Inc., a Delaware Corporation, certifies that it is the assignee of the entire right, title and interest in the patent identified above by virtue of either:

A.[] An assignment from the inventor(s), of the patent application identified above. The assignment was recorded in the United States Patent and Trademark Office on _____, at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

B.[X] A chain of title from the inventor(s), of the patent application identified above, to the current assignee as shown below:

1. From: Heinz Willebrand and Maha Achour;
To: LightPointe Communications, Inc., a Colorado Corporation;
The document was recorded in the United States Patent and Trademark
Office on 3/31/00, at Reel 010720, Frame 0742.

2. From: LightPointe Communications, Inc., a Colorado Corporation;
To: LightPointe Communications, Inc., a Delaware Corporation;
A copy of the document is attached.

Copies of assignments or other documents in the chain of title are attached.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

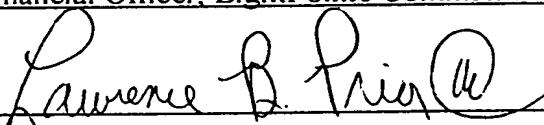
The undersigned (whose title is supplied below) is empowered to act on behalf of the assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Lawrence B. Prior III

Chief Financial Officer, LightPointe Communications, Inc.

Signature



Dated

11/22/00

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"LIGHTPOINTE COMMUNICATIONS, INC.", A COLORADO CORPORATION, WITH AND INTO "LIGHTPOINTE COMMUNICATIONS, INC." UNDER THE NAME OF "LIGHTPOINTE COMMUNICATIONS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINETEENTH DAY OF JULY, A.D. 2000, AT 12 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



Edward J. Freel
Edward J. Freel, Secretary of State

3250924 8100M

001364583

AUTHENTICATION: 0569961

DATE: 07-20-00

**CERTIFICATE OF OWNERSHIP
AND MERGER
OF
LIGHTPOINTE COMMUNICATIONS, INC.
(a Colorado corporation)
INTO
LIGHTPOINTE COMMUNICATIONS, INC.
(a Delaware corporation)**

LightPointe Communications, Inc., a Colorado corporation (the "Company"), does hereby certify as follows in accordance with Section 253 of the Delaware General Corporation Law:

FIRST: The Company owns 100% of the issued and outstanding stock of LightPointe Communications, Inc., a Delaware corporation ("LightPointe—Delaware").

SECOND: That, pursuant to an Action by Unanimous Written Consent of the Board of Directors of the Company, dated as of June 23, 1999, the following resolutions were adopted:

RESOLVED, that the Company shall be reincorporated as a Delaware corporation by effecting a merger (the "Merger") of the Company with and into LightPointe Communications, Inc., a Delaware corporation ("LightPointe—Delaware"), in which each outstanding share of the Common Stock of the Company shall be converted into one (1) share of Common Stock of LightPointe—Delaware having a par value of \$.001 per share, and each outstanding share of the Series A Preferred Stock of the Company shall be converted into one (1) shares of Series A Preferred Stock of LightPointe—Delaware having a par value of \$.10 per share;

RESOLVED FURTHER, that each option or warrant issued or granted by the Company to purchase shares of the Company's Common Stock that is outstanding on the effective date of the Merger (the "Effective Date") shall, by virtue of the Merger and without any action on the part of the holder thereof, be changed into and become an option or warrant to purchase as many shares of Common Stock of LightPointe—Delaware, upon the same terms and conditions as set forth in those instruments evidencing such option or warrant as in effect on the Effective Date;

RESOLVED FURTHER, that the Articles of Merger, including an Agreement and Plan of Merger, between the Company and LightPointe—Delaware (the "Merger Agreement"), be, and the same hereby is, adopted and approved as a plan of reorganization of the Company within the provisions of Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended; and

RESOLVED FURTHER, that the President or Chief Executive Officer or any Vice President and the Secretary or any Assistant Secretary of the Company or their designees be, and each of them hereby is, authorized and directed, for and on behalf of the Company, to execute and deliver the Merger Agreement and to affix the corporate seal of the Company thereto and to attest the same, with such changes therein and additions thereto as may be approved by the officers of the Company executing the same, such approval to be evidenced conclusively by his or their execution thereof.

THIRD: The aforesaid Merger Agreement has been adopted, approved, executed, certified and acknowledged in accordance with Section 253 of the Delaware Corporation Law.

FOURTH: The Certificate of Incorporation of LightPointe-Delaware shall be the Certificate of Incorporation of the surviving corporation.

FIFTH: The executed Merger Agreement is on file at the principal place of business of the surviving corporation. The address of said principal place of business is 6540 Lusk Blvd., Suite C148, San Diego, California, 92121.

SIXTH: A copy of the Merger Agreement will be furnished on request and without cost to any stockholder of any constituent corporation.

SEVENTH: The Effective Date of the Merger Agreement will coincide with the filing of this Certificate of Ownership and Merger with the Delaware Secretary of State.

Executed and verified this 19th day of July, 2000.

LIGHTPOINTE COMMUNICATIONS, INC.,
a Colorado corporation

By: Lawrence B. Prior
Lawrence B. Prior, III, Chief Executive Officer

ATTEST:

Secretary

RESOLVED FURTHER, that the President or Chief Executive Officer or any Vice President and the Secretary or any Assistant Secretary of the Company or their designees be, and each of them hereby is, authorized and directed, for and on behalf of the Company, to execute and deliver the Merger Agreement and to affix the corporate seal of the Company thereto and to attest the same, with such changes therein and additions thereto as may be approved by the officers of the Company executing the same, such approval to be evidenced conclusively by his or their execution thereof.

THIRD: The aforesaid Merger Agreement has been adopted, approved, executed, certified and acknowledged in accordance with Section 253 of the Delaware Corporation Law.

FOURTH: The Certificate of Incorporation of LightPointe- Delaware shall be the Certificate of Incorporation of the surviving corporation.

FIFTH: The executed Merger Agreement is on file at the principal place of business of the surviving corporation. The address of said principal place of business is 6540 Lusk Blvd., Suite C148, San Diego, California 92121.

SIXTH: A copy of the Merger Agreement will be furnished on request and without cost to any stockholder of any constituent corporation.

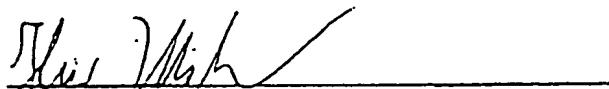
SEVENTH: The Effective Date of the Merger Agreement will coincide with the filing of this Certificate of Ownership and Merger with the Delaware Secretary of State.

Executed and verified this 19th day of July, 2000.

LIGHTPOINTE COMMUNICATIONS, INC.,
a Colorado corporation

By: _____
Lawrence B. Prior, III, Chief Executive Officer

ATTEST:


Secretary

**ARTICLES OF MERGER
OF**
LIGHTPOINTE COMMUNICATIONS, INC.
 (a Colorado corporation) FILED - CUSTOMER COPY
DONETTA DAVIDSON
COLORADO SECRETARY OF STATE
AND
LIGHTPOINTE COMMUNICATIONS, INC.
 (a Delaware corporation) 20001143228 C
\$ 110.00
SECRETARY OF STATE
07-21-2000 14:55:47

The undersigned corporation, pursuant to Section 7-111-105 of the Colorado Business Corporation Act, hereby executes the following Articles of Merger.

ARTICLE ONE

The names of the corporations proposing to merge and the names of the states under the laws of which such corporations are organized, are as follows:

Name of Corporation	State of Incorporation
LightPointe Communications, Inc. ("LightPointe—Colorado")	Colorado
LightPointe Communications, Inc. ("LightPointe—Delaware")	Delaware

ARTICLE TWO

The laws of the state under which such foreign corporation is organized permits such merger.

ARTICLE THREE

The name of the surviving corporation shall be "LightPointe Communications, Inc." The surviving corporation shall be governed by the laws of the State of Delaware having its principal office address at 6540 Lusk Blvd., Suite C148, San Diego, California 92121.

ARTICLE FOUR

The Agreement and Plan of Merger is attached hereto as Exhibit A.

ARTICLE FIVE

The Agreement and Plan of Merger has been duly approved by the required vote of shareholders of LightPointe—Colorado in accordance with the Articles of Incorporation of LightPointe—Colorado, as amended, and Section 7-111-103 of the Colorado Business Corporation Act. The total number of outstanding shares of the corporation is 5,570,000 (on an as-converted basis). The number of shares voting in favor of the Agreement and Plan of Merger

equaled or exceeded the vote required for each voting class. The percentage vote required was more than a majority for each voting class.

ARTICLE SIX

Immediately prior to the merger, LightPointe—Colorado (the parent corporation) owned at least ninety percent of the outstanding shares of each class of LightPointe—Delaware (the subsidiary corporation).

ARTICLE SEVEN

All provisions of the law of the State of Delaware and the State of Colorado applicable to the proposed merger have been complied with.

ARTICLE EIGHT

These Articles of Merger shall be effective upon completion of (i) the approval of the Agreement and Plan of Merger by the shareholders of LightPointe—Colorado, and (ii) the filing of these Articles of Merger with the Secretary of State of the State of Colorado. This effective date complies with Section 7-111-104(5) of the Colorado Business Corporations Act.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the undersigned corporations have caused these Articles of Merger to be executed in its name by its President or Chief Executive Officer and Secretary or Assistant Secretary, as of the day of July, 2000.

LIGHTPOINTE COMMUNICATIONS, INC.,
a Colorado corporation

By: Lawrence B. Prior III
Lawrence B. Prior, III, Chief Executive
Officer

By: _____
Secretary

LIGHTPOINTE COMMUNICATIONS, INC.,
a Delaware corporation

By: Lawrence B. Prior III
Lawrence B. Prior, III, Chief Executive
Officer

By: _____
Secretary

[SIGNATURE PAGE TO ARTICLES OF MERGER]

IN WITNESS WHEREOF, each of the undersigned corporations have caused these Articles of Merger to be executed in its name by its President or Chief Executive Officer and Secretary or Assistant Secretary, as of the ____ day of July, 2000.

LIGHTPOINTE COMMUNICATIONS, INC.,
a Colorado corporation

By: Lawrence B. Prior, III, Chief Executive Officer

By: Elis Wahr
Secretary

**LIGHTPOINTE COMMUNICATIONS, INC.,
a Delaware corporation**

By: Lawrence B. Prior, III, Chief Executive Officer

By: Elis M. K.
Secretary

[SIGNATURE PAGE TO ARTICLES OF MERGER]

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Merger Agreement") is made as of July __, 2000, by and between LightPointe Communications, Inc., a Colorado corporation ("LightPointe—Colorado"), and LightPointe Communications, Inc., a Delaware corporation ("LightPointe—Delaware") (LightPointe—Colorado and LightPointe—Delaware, collectively, the "Constituent Corporations").

The authorized capital stock of LightPointe—Colorado consists of 10,000,000 shares of Common Stock, \$0.001 par value per share and 2,000,000 shares of Preferred Stock, \$0.10 par value per share. The authorized capital stock of LightPointe—Delaware, upon effectuation of the transactions set forth in this Merger Agreement, will consist of 10,000,000 shares of Common Stock, \$.001 par value per share and 2,000,000 shares of Preferred Stock, \$0.10 par value per share.

The directors of the Constituent Corporations deem it advisable and to the advantage of the Constituent Corporations that LightPointe—Colorado merge with and into LightPointe—Delaware upon the terms and conditions provided herein.

NOW, THEREFORE, the parties do hereby adopt the plan of reorganization encompassed by this Merger Agreement and do hereby agree that LightPointe—Colorado shall merge with and into LightPointe—Delaware on the following terms, conditions and other provisions:

I. Terms And Conditions

1. **Merger.** LightPointe—Colorado shall be merged with and into LightPointe—Delaware (the "Merger") and LightPointe—Delaware shall be the surviving corporation (the "Surviving Corporation"), to be effective upon (i) the satisfaction of the conditions in Article III, Section 3 herein, (ii) the filing of the Certificate of Ownership and Merger with the Secretary of State of the State of Delaware, and (iii) the filing of the Articles of Merger with the Secretary of State of the State of Colorado (the "Effective Date").

2. **Succession.** On the Effective Date, LightPointe—Delaware shall continue its corporate existence under the laws of the State of Delaware and the separate existence and corporate organization of LightPointe—Colorado, except insofar as it may be continued by operation of law, shall terminate and cease.

3. **Transfer of Assets and Liabilities.** On the Effective Date, the rights, privileges, powers and franchises, both of a public as well as of a private nature, of each of the Constituent Corporations shall be vested in and possessed by the Surviving Corporation, subject to all of the disabilities, duties and restrictions of or upon each of the Constituent Corporations; and all and singular rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, of each of the Constituent Corporations, and all debts due to each of the Constituent Corporations on whatever account, and all things in action or belonging to each of the Constituent Corporations shall be transferred to and become vested in the

Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest thereafter shall be the property of the Surviving Corporation as they were of the Constituent Corporations, and the title to any real estate vested by deed or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger; provided, however, that the liabilities of the Constituent Corporations and of their stockholders, directors and officers shall not be affected and all rights of creditors and all liens upon any property of either of the Constituent Corporations shall be preserved unimpaired, and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not been consummated, except as they may be modified with the consent of such creditors, and all debts, liabilities and duties of or upon each of the Constituent Corporations shall attach to the Surviving Corporation and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

4. Capital Stock of LightPointe—Colorado and LightPointe—Delaware. On the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their respective stockholders, (i) each share of Common Stock and Preferred Stock issued and outstanding immediately prior thereto shall be combined, changed and converted into one (1) share of Common Stock and Preferred Stock of LightPointe—Delaware, respectively, in each case fully paid and nonassessable, and (ii) each share of Common Stock of LightPointe—Delaware issued and outstanding immediately prior thereto shall be canceled.

5. Stock Certificates. On and after the Effective Date, all of the outstanding certificates that, prior to that time, represented shares of Common Stock and Series A Preferred Stock shall be deemed for all purposes to evidence ownership of and to represent the shares of LightPointe—Delaware into which the shares of LightPointe—Colorado represented by such certificates have been converted as herein provided and shall be so registered on the books and records of the Surviving Corporation or its transfer agents. The registered owner of any such outstanding stock certificate shall be, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or its transfer agent, entitled to exercise any voting and other rights with respect to and to receive any dividend and other distribution upon the shares of LightPointe—Delaware evidenced by such outstanding certificate as above provided.

6. Options and Warrants. On the Effective Date, if any options or warrants or rights granted under any stock option/stock issuance plan of LightPointe—Colorado remain outstanding, then the Surviving Corporation will assume the outstanding and unexercised portions of such options or warrants and such options or warrants shall be changed and converted into options or warrants to purchase Common Stock of LightPointe—Delaware, such that an option or warrant to purchase one share of Common Stock of LightPointe—Colorado shall be converted into an option or warrant to purchase one (1) share of Common Stock of LightPointe—Delaware. No other changes in the terms and conditions of such options or warrants will occur and any rights or restrictions under any option in effect as of the Effective Date shall continue with respect to LightPointe—Delaware after the Merger.

7. Employee Benefit Plans. On the Effective Date, the Surviving Corporation shall assume all obligations of LightPointe—Colorado under any and all employee benefit plans in

effect as of such date with respect to which employee rights or accrued benefits are outstanding as of such date. On the Effective Date, the Surviving Corporation shall adopt and continue in effect all such employee benefit plans upon the same terms and conditions as were in effect immediately prior to the Merger.

II. Charter Documents, Directors And Officers

1. **Certificate of Incorporation and Bylaws.** From and after the Effective Date, the Certificate of Incorporation of LightPointe—Delaware shall read in its entirety as set forth in full in Exhibit A attached hereto and made a part hereof, without change or amendment until further amended in accordance with the provisions thereof and applicable law. The Bylaws of LightPointe—Delaware in effect on the Effective Date shall continue to be the Bylaws of the Surviving Corporation without change or amendment until further amended in accordance with the provisions thereof and applicable law.

2. **Directors.** The directors of LightPointe—Colorado immediately preceding the Effective Date shall become the directors of the Surviving Corporation on and after the Effective Date to serve until the expiration of their terms and until their successors are elected and qualified.

3. **Officers.** The officers of LightPointe—Colorado immediately preceding the Effective Date shall become the officers of the Surviving Corporation on and after the Effective Date to serve at the pleasure of its Board of Directors.

III. Miscellaneous

1. **Further Assurances.** From time to time, and when required by the Surviving Corporation or by its successors and assigns, LightPointe—Colorado shall execute and deliver, or cause to be executed and delivered, such deeds and other instruments and shall take or cause to be taken such further and other action as shall be appropriate or necessary in order to vest or perfect in or to conform of record in the Surviving Corporation the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of LightPointe—Colorado and to carry out the purposes of this Merger Agreement, and the officers and directors of the Surviving Corporation are authorized to take any and all such action and to execute and deliver any and all such deeds and other instruments to carry out the purposes of this Merger Agreement.

2. **Amendment.** At any time before or after approval by the shareholders of LightPointe—Colorado, this Merger Agreement may be amended in any manner (except that, after the approval of the Merger Agreement by the shareholders of LightPointe—Colorado, the principal terms may not be amended without the further approval of the shareholders of LightPointe—Colorado) as may be determined in the judgment of the respective Board of Directors of LightPointe—Delaware and LightPointe—Colorado to be necessary, desirable, or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purpose and intent of this Merger Agreement.

3. **Conditions to Merger.** The obligation of the Constituent Corporations to effect the transactions contemplated hereby is subject to satisfaction of the following conditions (any or all of which may be waived by either of the Constituent Corporations in its sole discretion to the extent permitted by law):

(a) the Merger shall have been approved by the shareholders of LightPointe—Colorado in accordance with applicable provisions of the Colorado Business Corporation Act;

(b) LightPointe—Colorado, as sole stockholder of LightPointe—Delaware, shall have approved the Merger in accordance with the Delaware General Corporation Law; and

(c) any and all consents, permits, authorizations, approvals, and orders deemed in the sole discretion of LightPointe—Colorado to be material to the consummation of the Merger shall have been obtained.

4. **Abandonment or Deferral.** Notwithstanding the approval of this Merger Agreement by the shareholders of LightPointe—Colorado or by the sole stockholder of LightPointe—Delaware, at any time before the Effective Date, (a) this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either LightPointe—Colorado or LightPointe—Delaware or both, including by reason of a determination, in the sole discretion of either Board of Directors, that holders of an unacceptable number of shares intend to exercise their statutory appraisal rights pursuant to Sections 7-113-101 through 7-113-302 of the Colorado Business Corporation Act, or (b) the consummation of the Merger may be deferred for a reasonable period of time if, in the opinion of the Boards of Directors of LightPointe—Colorado and LightPointe—Delaware, such action would be in the best interests of such corporations. In the event of termination of this Merger Agreement, this Merger Agreement shall become void and of no effect and there shall be no liability on the part of either Constituent Corporation or their respective Board of Directors or stockholders with respect thereto, except that LightPointe—Colorado shall pay all expenses incurred in connection with the Merger or in respect of this Merger Agreement or relating thereto.

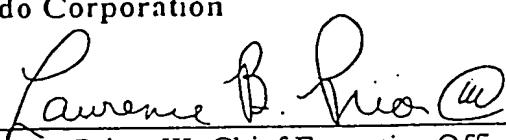
5. **Counterparts.** In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by the Board of Directors of LightPointe—Colorado and LightPointe—Delaware, is hereby executed on behalf of each such corporations and attested by their respective officers thereunto duly authorized.

LIGHTPOINTE COMMUNICATIONS, INC.,
a Colorado Corporation

By:

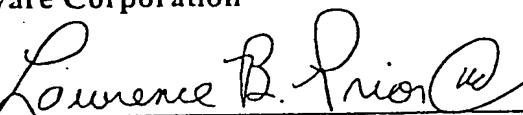

Lawrence B. Prior
Lawrence Prior, III, Chief Executive Officer

ATTEST:

Secretary

LIGHTPOINTE COMMUNICATIONS, INC.,
a Delaware Corporation

By:


Lawrence B. Prior
Lawrence Prior, III, Chief Executive Officer

ATTEST:

Secretary

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by the Board of Directors of LightPointe—Colorado and LightPointe—Delaware, is hereby executed on behalf of each such corporations and attested by their respective officers thereunto duly authorized.

LIGHTPOINTE COMMUNICATIONS, INC.,
a Colorado Corporation

By: _____
Lawrence Prior, III, Chief Executive Officer

ATTEST:

Lawrence Prior
Secretary

LIGHTPOINTE COMMUNICATIONS, INC.,
a Delaware Corporation

By: _____
Lawrence Prior, III, Chief Executive Officer

ATTEST:

Lawrence Prior
Secretary

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]